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REPORT
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THE SMALL BUSINESS DROUGHT RELIEF ACT

JULY 31, 2002.—Ordered to be printed

Mr. KERRY, from the Committee on Small Business and Entrepreneurship, submitted the following

R E P O R T

[To accompany S. 2734]

[Including cost estimate of the Congressional Budget Office]

The Committee on Small Business and Entrepreneurship, to which was referred the bill (S. 2734) to provide emergency assistance to non-farm small business concerns that have suffered economic harm from the devastating effects of drought, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

On July 24, 2002, the Committee on Small Business and Entrepreneurship considered the bill, S. 2734, to provide emergency assistance for non-farm small business concerns that have suffered economic harm from the devastating effects of drought. The Committee adopted by unanimous voice votes a substitute amendment offered by the Chairman of the Committee, Senator John Kerry, and the Ranking Republican, Senator Christopher Bond; an amendment offered by Senator Carl Levin to include low water levels on the Great Lakes as a disaster term; and an amendment offered by Senators John Edwards and George Allen to require the Administrator of SBA to respond to disaster declaration requests from governors within 30 days. As amended, S. 2734 would clarify that non farm-related small businesses that have suffered economic injury from drought are eligible to receive financial assistance through the Small Business Administration Economic Injury Disaster Loan program. Having considered S. 2734, the Committee reports favorably thereon and recommends that the bill, as amended, do pass.

99–010

I. NEED FOR BILL

In favorably reporting S. 2734, the Small Business Drought Relief Act, the Committee seeks equal treatment of small business drought victims by the Small Business Administration (SBA or the Agency). According to the SBA's interpretation of the current disaster relief statute, only farm-related[1] small businesses hurt by drought are eligible for SBA economic injury disaster loans. The Agency is denying non farm-related small businesses[2] hurt by drought access to economic injury disaster loans based on the view that drought is not a disaster because by statutory definition a disaster must be a "sudden event." The Committee believes the SBA has failed to take into account the full scope of Congress' intent when it approved the disaster relief law in the Small Business Act (see paragraph 7(b)(2) and subparagraphs (A), (B), (C) and (D)).

The Committee has interpreted paragraph 7(b)(2) of the Small Business Act to mean that any small business concern is eligible for SBA economic injury disaster loans (EIDLs) after a disaster, including a drought, has been proclaimed. The SBA has interpreted its authority under the Federal statute to apply only to farm-related small businesses when there is a drought disaster declaration. The Committee is concerned that the SBA's interpretation of its authority narrows the scope of disaster relief assistance that the Congress intended in passing the law. Consequently, the Committee staff sought from the SBA Office of General Counsel (OGC) its legal opinion and any legislative history that would support the SBA's interpretation of the law; the OGC has refused to provide the Committee with a copy of the legal opinion to support its position. Further demonstrating the need for this legislation, the SBA OGC has informed the Committee staff that it has no evidence that Congress intended for the SBA to limit EIDLs to farm-related small business concerns when there is a drought disaster declaration by the U.S. Secretary of Agriculture.

Contrary to the position that drought is not a disaster because it is not a sudden event, as of July 16, 2002, the SBA had in effect drought declarations in 36 states, limiting disaster loan eligibility to farm-related small businesses. The 36 states include: Arizona, California, Colorado, Delaware (severe weather due to very low precipitation), Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland (severe weather due to very low precipitation), Massachusetts, Michigan, Montana, Nebraska, Nevada, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia (severe weather due to very low precipitation), Wisconsin, and Wyoming.

As illustrated by the following example, the SBA's current policy is unfair and contradictory: If a small business owner of a dress shop in a town that has been declared a disaster because of drought is unable to pay the bills because farmers hurt by drought

[1] According to SBA's Office of Disaster Assistance, the term farm-related means more than small businesses related to agriculture, such as feed and seed stores. As described in an example in this section regarding a dress shop, SBA interprets "farm-related" to include small businesses whose revenues are tied to farm-related businesses hurt by the relevant disaster.

[2] Droughts hurt more than agricultural, forestry and livestock businesses. Some examples of small businesses that are reliant upon water sources, such as streams and rivers and lakes, but are not farm-related, would be fish and tackle shops, rafting businesses, restaurants, motels, camp grounds, marinas and gas stations.

are no longer spending money in the store, the small business concern is eligible for an SBA economic injury disaster loan. However, if a neighboring small business boat rental company in that same town is unable to meet its obligations because the drought has dried up the lake and it has lost its customers, it is not eligible for an SBA disaster loan UNLESS the owner can prove that he or she lost business because farmers hurt by the drought are no longer renting the boats.

The Committee concludes, based on the aforementioned declarations and the statute,[3] that the SBA has the authority to make economic injury disaster loans to "any small business concern" in a declared disaster area, not just farm-related small businesses. In order to correct the interpretation by the SBA of this disaster relief statute to ensure that both farm-related and non farm-related small businesses are eligible for economic injury disaster loans, the bill amends the Small Business Act to restate its authority, to specifically include drought in the definition of "disaster," and to express the intent of this Committee, which has oversight of the SBA, that the Agency is to treat all small businesses in declared disaster areas equally. It is simply not fair if two small businesses next door to each other are suffering economic injury because of drought that one would be eligible for SBA disaster assistance and the other would not.

This bill also seeks to aid small businesses suffering economic injury because of low levels on the Great Lakes by making them eligible for SBA economic injury disaster loans and requires the SBA Administrator to respond in writing to disaster declarations from governors within 30 days.

II. DESCRIPTION OF THE BILL

In order to help small non farm-related businesses hurt by drought, eliminate contradictory interpretations, and clarify existing law and Congressional intent, the bill makes several changes to the Small Business Act. To address the SBA's contradictory argument that a drought is not a disaster by definition, the bill adds the word drought to the definition of disaster in the Small Business Act. In order to address concerns that adding drought would expand SBA's disaster program too broadly, the Kerry-Bond substitute amendment specifies that assistance for drought victims is only available to small businesses, not home owners, and that they are only eligible for SBA economic injury disaster loans, not physical disaster loans.

While the Committee believes that SBA already has the authority to make economic injury disaster loans to "any small business concern" in a declared disaster area and should treat all such businesses equally, in order to clarify that authority as it applies to drought victims, the Kerry-Bond substitute amendment, that was unanimously approved by the Committee, directs the Administra-

[3] Section 7(b) Except as to agricultural enterprises as defined in section 18(b)(1) of this Act, the Administration also is empowered to . . . Section 7(b)(2) make such loans . . . as the Administration may determine to be necessary or appropriate to any small business concern or small agricultural cooperative located in an area affected by a disaster, if the Administration determines that the concern or the cooperative has suffered a substantial economic injury as a result of such disaster . . ."

tion to make economic injury disaster loans available to both farm-related and non farm-related small businesses hurt by drought.

The Kerry-Bond substitute amendment also includes a provision to ensure that small business drought victims meet requirements demonstrating substantial economic injury caused by drought.

Last, the Kerry-Bond substitute preserves a state governor's role in initiating a drought declaration rather than limiting it to action by the U.S. Secretary of Agriculture.

Low Water Levels on the Great Lakes

The Committee unanimously approved an amendment offered by Senator Levin to make small businesses, such as marinas or charter fishing operations, hurt by disastrously low water levels on the Great Lakes eligible for SBA economic injury disaster assistance loans. The amendment adds "below average water levels in the Great Lakes" to the definition of disaster, which currently includes but is not limited to floods, hurricanes, earthquakes, ocean conditions resulting in the closure of customary fishing waters, riots, and civil disorders.

During the markup of the bill, the Committee's ranking member raised concerns about the impact of the amendment on the disaster loan program and the cost. He proposed accepting the amendment and committed to work with the Chairman and Senator Levin to resolve any issues before the bill's consideration by the full Senate. In resolving the cost issues, CBO does not expect the demand for loans because of low water levels in the Great Lakes to be very large, and estimates a cost of approximately $1 million annually.

Great Lakes small businesses that are suffering economic injury because of severely low water levels have been excluded by a technicality from the effort to help small businesses harmed by drought, including very low precipitation. This is because Michigan and other Great Lakes states are not officially "in drought." Yet the Great Lakes have experienced alarmingly low water levels over the past few years, harming the small businesses that depend on the lakes for their livelihood. For example, under normal conditions, small marinas generally need to dredge every 5–25 years; however, during periods of low water, they must dredge almost on an annual basis, which causes significant economic injury because they are faced with unforeseeable and large expenses. As a result, these small businesses do not have the resources to meet the added costs of operating when the lake water levels are low.

A Michigan State University report concluded that the estimated impact of below average water levels on Michigan's marinas alone was $11.1 million in a single year.[4] Great Lakes marinas are finding it hard to pay their bills because they have lost revenue due to the costs associated with below-average low water levels; for example, customers (boats) are unable to access fuel docks and other facilities, such as boat maintenance facilities. An SBA low-interest economic injury disaster loan would help these small businesses meet their operating costs, which includes dredging expenses. Dredging is necessary to marinas because it restores customer access to their facilities, thereby allowing the marinas to generate

[4] "The Impacts of Low Water on Michigan Great Lakes Marinas," by Edward Mahoney, Chang Tzu-Ching, Charles Pistis, and Lori Martin (Michigan State University, April 2000).

earnings, which in turn allows repayment of the loans. Disaster assistance loans would allow the marina operator to spread the cost of dredging over the expected life of the loan.

While low water levels do not qualify as a natural disaster under current definitions and are not considered a "drought," it is an unpredictable natural occurrence that is beyond the control of the small business owner and that causes significant economic hardship. Lower than average water levels are similar to other ocean conditions that already qualify for disaster assistance loans in the existing SBA program, such as "recent El Nino-related ocean conditions" and "commercial fishery failures, fishery resource disasters, [or] ocean conditions resulting in the closure of customary fishing waters." Clearly, lower than average water levels on the Great Lakes would fit the intent of these other existing qualifying categories.

Low water levels on the Great Lakes differ from low water levels on a river because the Great Lakes take much longer to rebound from these conditions due to the interconnected system of lakes and rivers. Water levels in a large river system usually fluctuate as a function of localized storm activity or short-term climate changes and are often controlled by locks and dams built to minimize flooding. However, fluctuations in Great Lakes water levels are a function of the hydrological cycle. The Great Lakes, like river systems, are subject to seasonal fluctuation, but are more affected by longer-term climate changes. Once extremely high or low water levels occur in the Great Lakes system, it can take the system up to 3–5 years to recover from these situations. For example, although the Great Lakes have experienced above average precipitation over the past twelve months, the water levels of lakes Superior, Michigan, Huron, and St. Clair are still well below average and could remain so for the next six months. It is this lengthy recovery time that can have a significant adverse effect on commerce in the Great Lakes.

Economically, the Great Lakes are of national and international importance. They are the largest freshwater body in the world, containing one-fifth of the world's freshwater. More than 40 million people live in and around the Great Lakes and depend upon this resource for drinking water, recreation, electrical and hydro power, and commerce. For example, sport fishing is a $4 billion industry in the Great Lakes Basin.

Presently, the Great Lakes water levels are at their lowest episode in 35 years, and small business, as well as the general public, has been significantly impacted. This resource is very important to the economy of the Great Lakes region and the Nation.

A disaster declaration for small businesses suffering economic injury as a result of below average water levels in the Great Lakes would follow the same process used for other SBA economic injury disaster declarations. A Governor must ask the Small Business Administration to make a declaration based on the governor's certification that at least 5 small businesses in a disaster area have suffered substantial economic injury as a result of the disaster and are in need of financial assistance not otherwise available on reasonable terms.

The Committee finds that providing emergency assistance to small business concerns that have suffered substantial economic harm due to below average water levels in the Great Lakes will help these businesses remain viable and productive contributors to the Great Lakes regional economy, providing jobs and contributing to the tax base.

Timely Response Requirement to Governors

The Committee unanimously approved an amendment offered by Senator Edwards for himself and Senator Allen to require the Administrator of SBA to respond in writing to disaster declaration requests from governors within 30 days. While the SBA has a good response record, the amendment is aimed at preventing SBA from slipping into the USDA's record of 7- and 8-month delays.

III. COMMITTEE VOTE

In compliance with rule XXVI(7)(b) of the Standing Rules of the Senate, the following votes were recorded on July 24, 2002. A motion by Chairman Kerry to adopt a substitute amendment offered for himself and Senator Bond clarifying that non farm-related small business drought victims are eligible for SBA economic injury disaster loans passed by unanimous voice vote. A motion by Chairman Kerry to adopt an amendment by Senator Levin to allow small businesses suffering economic injury because of low water levels of the Great Lakes to apply for SBA economic injury disaster loans passed by unanimous voice vote. A motion by Senator Kerry to adopt an amendment by Senators Edwards and Allen to require the Administrator of SBA to respond to disaster declaration requests from governors within 30 days passed by unanimous voice vote. A motion by Senator Kerry to adopt the "Small Business Drought Relief Act" as amended, was approved by a 19–0 recorded vote, with the following Senators voting in the affirmative: Kerry, Bond, Levin, Harkin, Lieberman,Wellstone, Cleland, Landrieu, Edwards, Cantwell, Carnahan, Burns, Bennett, Snowe, Enzi, Fitzgerald, Crapo, Allen, and Ensign.

IV. EVALUATION OF REGULATORY IMPACT

In compliance with rule XXVI(11)(b) of the Standing Rules of the Senate, it is the opinion of the Committee that no significant additional regulatory impact will be incurred in carrying out the provisions of this legislation. There will be no additional impact on the personal privacy of companies or individuals who utilize the services provided.

V. CHANGES IN EXISTING LAW

In the opinion of the Committee, it is necessary to dispense with the requirement of rule XXVI(12) of the Standing Rules of the Senate in order to expedite the business of the Senate.

VI. COST ESTIMATE

In compliance with rule XXVI(11)(a)(1) of the Standing Rules of the Senate, the Committee estimates that the cost of the legislation will be equal to the amounts indicated by the Congressional Budget Office in the following letter.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 31, 2002.

Hon. JOHN F. KERRY,
Chairman, Committee on Small Business and Entrepreneurship, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2734, the Small Business Drought Relief Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Julie Middleton.

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 2734—Small Business Drought Relief Act

Summary: S. 2734 would make Small Business Administration (SBA) loans available to non-agricultural small businesses that have suffered economic injury because of drought conditions through SBA's disaster loan program. Under the bill, such conditions would include low water levels in the Great Lakes region. The loans would be directed at small businesses that sell, distribute, market, or otherwise engage in commerce related to water and water resources, such as lakes, rivers, and streams.

Assuming appropriation of the necessary funds, CBO estimates that implementing S. 2734 would cost about $25 million over the 2003–2007 period. S. 2734 would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply. S. 2734 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 2734 is shown in the following table. The costs of this legislation fall within budget function 450 (community and regional development).

	By Fiscal Year, in Millions of Dollars—					
	2002	2003	2004	2005	2006	2007
SPENDING SUBJECT TO APPROPRIATION						
Spending Under Current Law for SBA's Disaster Loan Program:						
Estimated Authorization Level [1]	285	291	299	306	314	323
Estimated Outlays	338	314	307	304	312	321
Proposed Changes:						
Estimated Authorization Level	0	5	5	5	5	5
Estimated Outlays	0	4	5	5	5	5
Spending under S. 2734 for SBA's Disaster Loan Program:						
Estimated Authorization Level	285	296	304	311	319	328
Estimated Outlays	338	318	312	309	317	326

[1] The 2002 level is the amount appropriated for that year for SBA's Disaster Loan Program. Amounts shown for the 2002–2007 period are CBO's baseline estimates that reflect the 2002 appropriation adjusted for anticipated inflation.

Basis of Estimate: For this estimate, CBO assumes that S. 2734 will be enacted by the start of fiscal year 2003 and that the necessary funds will be appropriated for each year.

Most SBA loans under the disaster loan program are to repair physical damage caused by natural disasters. About 20 percent of the agency's loans go to small businesses to help them recover from economic injury caused by disasters. In recent years SBA has provided an average of about $160 million a year in economic injury loans to small businesses.

SBA provides economic injury loans to farm-related businesses that are located in areas adversely affected by drought as designated by the Secretary of Agriculture. S. 2734 would authorize SBA to provide loans to nonfarm businesses affected by drought as well. State governors would have the authority to petition the SBA to declare certain counties or their entire state a disaster area because of drought. If SBA approves a state's petition, the agency could provide small businesses with economic injury loans in designated areas. In addition, S. 2734 would authorizes SBA to provide loans to small businesses that have been adversely affected by low water levels in the Great Lakes.

CBO expects that recreation and water sports businesses, marinas, and other tourism businesses are the small businesses most likely to apply for loans under this expanded program. CBO estimates that demand for this expanded loan program would increase by 15 percent to 20 percent. An increase of this magnitude would result in $25 million to $30 million more economic injury loans being made each year. Under the Federal Credit Reform Act, the budgetary cost of loans is the net present value of cash flows including loan disbursement and repayments, net of defaults and recoveries. The average resulting subsidy cost of SBA disaster assistance loans is 17 percent. Thus, CBO estimates that the increase in loans under S. 2734 would cost about $5 million a year.

SBA projects that demand for economic injury loans under this bill may increase by as much as 30 percent, but CBO expects that demand for these loans will not meet SBA's expectations—which would be equivalent to the increase experienced by SBA following the September 2001 terrorist attacks. The increase in demand for such loans, however, would depend on the number and duration of drought declarations that may occur. It would also be a challenge for the SBA to develop a definition of drought that is applicable across the country because of varying geographic weather patterns and normal climatic fluctuations. In addition, small businesses must prove that they have suffered substantial economic injury to be eligible for a loan. Because of the chronic nature of drought versus the sudden impact of other disasters, businesses may have trouble proving their eligibility for a loan.

CBO expects the demand for loans because of low water levels in the Great Lakes would not be very large either because the demand for a similar state program and other SBA programs has been small. In Michigan, for example, the state provided loans to marinas who were suffering economic harm because of low water levels. In the two-year period since 2000, 15 loans have been dispersed with an average loan amount of about $40,000. In addition, the SBA has made loans available to Great Lakes businesses through its 7(a) general business loan program and demand for those loans has been low. Though the terms of economic injury loans are more favorable than the terms of the above-mentioned loans, CBO expects that increased demand for such loans would be small.

Pay-as-you-go considerations: None.

Intergovernmental and private-sector impact: S. 2734 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal costs: Julie Middleton; impact on state, local, and tribal governments: Leo Lex; impact on the private sector: Cecil McPherson.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

VII. SECTION-BY-SECTION ANALYSIS

The bill amends the Small Business Act to clarify that non farm-related small businesses that have suffered economic injury caused by drought are eligible to receive financial assistance through the Small Business Administration Economic Injury Disaster Loan program; currently the Small Business Administration makes available economic injury disaster loans only to farm-related drought victims. It also authorizes the Small Business Administration to make economic injury disaster loans to small businesses adversely affected by low water levels on the Great Lakes and requires the Administrator of SBA to respond in writing to disaster declaration requests from governors within 30 days.

Section 1. Loans to Small Business Concerns Damaged by Drought

Subsection (a) establishes the short title of the bill as the "Small Business Drought Relief Act."

Subsection (b) sets forth the findings.

Subsection (c)(1) amends the definition of disaster in Section 3(k) of the Small Business Act (15 U.S.C. 632(k)) to include drought and low water levels on the Great Lakes, while specifying that drought victims can only apply for SBA economic injury disaster loans and not physical disaster home loans or physical disaster business loans.

Subsection (c)(2)(A) amends Section 7(b)(2) of the Small Business Act (15 U.S.C. 636(b)(2)) to clarify that SBA has the authority to make economic injury disaster loans not only to farm-related small businesses hurt by drought but also to non farm-related small businesses hurt by drought.

Subsection (c)(2)(B) amends Section 7(b)(2)(B) of the Small Business Act (15 U.S.C. 636(b)(2)) to correct the cite reference to the law governing the authority of the Secretary of Agriculture to declare a disaster. It also includes language to ensure that small business drought victims meet requirements demonstrating substantial economic injury caused by drought.

Subsection (d) amends Section 7(b)(2)(D) of the Small Business Act (15 U.S.C. 636(b)(2)(D)) to require the SBA Administrator to respond in writing to disaster declarations from governors within 30 days.

Subsection (e) directs the SBA to issue final rules to implement this Act within 45 days of enactment.

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